

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DIRECT MARKETING CONCEPTS, INC, et
al,

Defendants

CIVIL ACTION NO. 04-CV 11136GAO

AFFIDAVIT OF SIMON MENA

I, Simon Mena, under oath declare as follows:

1. I am a Senior Sales Manager with Direct Marketing Concepts, Inc. (“DMC”). I have been employed with DMC since September 2002 in sales, first as a sales person and then as a sales manager. I have personal knowledge of the facts contained herein.
2. My responsibilities as a Sales Manager include but are not limited to: supervision of sales department, coaching, counseling, and training of sales department, monitoring sales representatives phone calls, disciplining and ultimately terminating non-compliant and insubordinate sales representative behavior, developing and writing sales scripts for infomercials, following up with sales representatives to ensure DMC policies and procedures are accurately and legally being followed, and appropriately disciplining violations of those policies and procedures.
3. For the past year, I have reported directly to Brad Tuttle, Vice President of Sales and Operations. I now report directly to Jack Freeman, newly appointed Vice President of Sales and Training.

4. I was employed by DMC as a sales representative during the period that DMC was acting as a call center for the coral calcium infomercial. During this period, the salespeople answered the telephones when media was running in certain markets and forwarded orders from customers offsite to a third party fulfillment house. DMC's only function during this period in connection with the infomercial was to answer the telephones.

5. During this period I do not believe that DMC purchased any media time for the coral calcium show, nor did DMC purchase product, fill customer orders, accept customer funds or ship product.

6. I believe that all of the coral calcium scripts provided to the DMC salespeople were originally prepared by the third party distribution and media purchasing company. I do not recall that scripts were prepared by DMC. I do not believe that Donald Barrett wrote, reviewed and approved the scripts for the coral calcium infomercial. My understanding was that the scripts were prepared by the media buyer and fulfillment house in consultation with Robert Barefoot and were derived from the information in his books. We were always told that the first product that we were selling and discussing with customers were the books. We were also explicitly told and trained that we were to adhere to the content of the books and the infomercial, and were not to make any statements to customers that deviated from the content of the books. All salespeople were required to read the books as part of their training.

7. It has always been DMC's policy to never make any claim to a customer that any dietary supplement product will treat, prevent or cure any disease. We were trained to never make any such claims, and we were consistently told to inform

customers that we are not doctors and that customers should consult their doctors before commencing any dietary supplement program. This was the case with coral calcium and with Supreme Greens.

8. With regard to purchase programs such as continuity programs, it has always been DMC's policy to fully inform the customer regarding the terms of any such program and to obtain their express consent to the program before assessing any charges. It has never been the policy of DMC to charge a customer without their consent. Such a policy would make no sense, given that the customer can always simply return the product for a full refund or cancel at any time. Thus, there is no benefit to angering a customer by not obtaining their informed consent to a purchase, and confirming that purchase, before charging their credit card. Donald Barrett and the sales managers have always communicated to the sales floor that the only means of survival in a customer driven business is to keep the customer happy. Forcing autoship purchases on customers is counter to this policy and while it no doubt has occurred with certain sales representatives, it has been actively discouraged during my employment at the company. I also have personally witnessed employees being disciplined for such practices.

9. I am aware of comments made by certain sales representatives to the effect that autoship sales equal bonuses and job security. As a consumer products company, the existence of continuity sales and a consistent amount of repeat customers is critical to the overall success of the company. To the contrary, angry customers or problems with the company's ability to process customer orders and credit cards can be disastrous for the company. Thus, while continuity sales are a major part of the business and are a key to its long-term success, which Donald Barrett has discussed with the sales staff, that has

never translated into overly aggressive or unlawful sales practices or placing customers on any purchase plan without their consent. I understand that DMC's return rates are actually below industry averages.

10. DMC's policy has always been to offer customers money-back guarantees, and the opportunity to cancel any long-term purchase plan at any time. During my employment at DMC, I am not aware of any time where this guarantee has not been honored.

11. I am aware of the "E-8" promotion that ran for a very brief period in 2003, and I was on the sales floor during this period. From the beginning, the terms of this plan, in which a free bottle of E-8 Daily was offered to customers that signed up for a continuity program, was subject to manipulation by the sales staff. Specifically, we came to learn that many salespeople were offering the free bottle of E-8 to customers and telling them that they could get the free bottle and then cancel their continuity order with no requirement to return the product and no penalty. Sales staff were still required to obtain express consent. The salesperson would then get a commission on a sale that he or she knew would be cancelled, and the program allowed them to keep that commission. As a result, DMC lost a significant amount of money on the promotion and it was quickly ended. In addition, customer service noticed a spike in cancellations by customers, who were calling at the direction of the salespeople to cancel and claiming that they were improperly placed on autoship. These calls were often reflected as unauthorized autoships in the customer files.

12. I am not aware of any widespread complaints by customers during 2002 through 2004, claiming that they were placed on autoship without their consent.

Individual complaints have occurred from time to time, but they are handled by customer service and resolved. In many cases, the customer remains on the plan.

13. In connection with the Supreme Greens infomercial, Alex Guerrero spoke to the sales staff on several occasions about his background, the Supreme Greens product, his clinic and his studies. In each of these sessions, he introduced himself as a doctor and indicated that he operated a clinic in California. He also cited to numerous studies that he had conducted and cited medical research. My experience was that all of the information provided to the sales floor was provided by Guerrero and reviewed by Guerrero. It was also my experience that all of the information provided to the sales floor was derived from the infomercial and tracked only what was stated in the infomercial. Sales personnel were expressly told never to claim Supreme Greens was an treatment or cure for any disease and were told to tell customers to consult with their doctors in connection with any medical questions.

14. For informational purposes only, we would note if a customer informed us of any specific issues that they were concerned about. We were repeatedly told and trained to never give medical advice of any kind or to claim that we were qualified to give medical advice. We always told customers to consult with their doctors if they identified any specific disease on a sales call.

15. I understand that the FTC has alleged that DMC has failed to ensure that their sales representatives provide the required disclosures to consumers before signing them up for continuity packages and failed to ensure that customers were provided with detailed information about its continuity programs. This is not true.

16. It has always been and remains the policy at DMC to require sales representatives to explain, confirm, and record any transaction in which a customer is sold an auto-ship/continuity package.

17. These recordings are also known as “Contract Genie.” These recordings serve several purposes. They allow us to confirm that a customer has signed up for the continuity program if they later claim that they have not done so, and they allow us to monitor our sales force for compliance. It is often the case that a customer will claim that a certain purchase was unauthorized, but the Contract Genie will demonstrate that they were provided an explanation of the plan and expressly confirmed their order. Although the customer may still cancel, the Contract Genie has significantly enhanced quality control and customer service in connection with these issues.

18. Since December 2004 we have also established a Quality Control branch within our sales department to monitor and check these recordings to ensure the sales representatives are properly recording these sales, properly explaining the continuity program to the customer; and getting a verbal confirmation from the customer consenting to the terms of the sale, regardless of which program they have chosen.

19. In the event that our Quality Control Department discovers a recording that is not compliant to the aforementioned guidelines, we take immediate action to correct the situation, and when necessary, discipline the sales representatives.

20. We have issued written counseling to sales representatives that have not had accurate recordings with their continuity sales.

21. Furthermore, through our customer service department, we have issued refunds to customers who may have been unclear about the terms of their continuity

packages. We monitor, listen, and review these recordings to consistently improve upon our sales practices.

22. As part of these training efforts, we have the sales representatives, with a sales manager, listen to their own recordings so that the sales representatives can hear for themselves what they sound like to the customer, and if necessary, make any adjustments.

23. In each sales representative's cubicle, we have posted script and recording instructions explaining the proper procedures for accurately informing customers, receiving the required verbal confirmation and recording an auto ship confirmation. These instructions are also available to the sales representatives for easy access in our computer sales system.

24. In each sales script that needs a recording confirmation (i.e. auto ships) we denote that the sale must be recorded on "Contract Genie". Our computer system is set up so that a sales representative cannot authorize an autoship sale without first placing a "Contract Genie" confirmation recording number in a designated area on the sales screen. This is the number we use to retrieve and review these recordings to ensure accuracy and compliance.

25. Monitored "Contract Genie" reports are sent out to each of the Sales Managers, including myself, DMC's General Counsel Michael Sciucco, Human Resources head John Maihos, and Customer Service Manager Cathy Ratcliffe, to keep all parties informed as to which sales representatives need to be/ are getting documented counseling for their confirmation recordings.

26. As a Senior Sales Manager I spend 60-70 hours a week with my sales representatives, and I place great pride and value on the ethical side of the business.

27. I work closely with Michael Sciucco, General Counsel and the other Senior Sales Managers on compliance issues. Any time a new script is introduced to the sales floor, or amendments are made to a current script, our policy is to send the script to Attorney Sciucco for review and to ensure legal compliance. After Attorney Sciucco makes any necessary edits, we then disperse the material to the sales floor.

28. This procedure holds true for any product information, pamphlets, brochures, etc. which the sales department uses to sell our products; as well as any tools management uses to evaluate the sales representatives. We have established our sales system to follow these approved scripts along with approved scripted rebuttals and approved product power sheets.

29. We monitor our staff by following an approved phone monitoring form to ensure that our sales representatives are staying on course with our scripts, rebuttals, and approved product information. If a sales representative is presenting any information or making any statements or claims to a customer that have not been previously approved by Attorney Sciucco, we immediately pull that sales representative off of the telephone and require them to undergo additional training.

30. Furthermore, any time we implement a new policy or procedure on the sales floor, we double-check the proposal with Attorney Sciucco and John Maihos, Vice President of Human Resources, to ensure legal compliance.

31. DMC's management, including Donald Barrett, has always been clear in discussions with the sales staff that DMC does not want people who push products on customers, sell something to a person that they don't want, misrepresent our products, treat people with disrespect, or rush a caller off the phone when no order is imminent.

Mr. Barrett has always stressed the importance of the repeat customer, and that we are in business for the long term. He often states that if DMC gives people a bad opinion of our company, we won't have happy customers who are willing to call us back when another product is offered.

32. DMC also encourages sales people to take the time on the phones to establish relationships with their customers. The company encourages patient and professional sales representative, and discourages rude, aggressive or unprofessional behavior. Sales candidates are trained for 10-20 hours for a phone call that may last 5-8 minutes. In our experience, only a well trained sales professional will handle customer calls with the respect and professionalism that we expect.

33. In conclusion, the FTC's allegation that DMC's sales department has been lax and non-compliant with our auto ships/continuity sales, or that the company has failed to continue to improve its sales practices is not true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 25th day of January, 2006 in Beverly, Massachusetts.

/s/ Simon Mena
SIMON MENA